

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**E.J., Appellant**

**and**

**U.S. POSTAL SERVICE, FAR ROCKAWAY  
POST OFFICE, Far Rockaway, NY, Employer**

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**Docket No. 21-1044  
Issued: March 16, 2022**

*Appearances:*

*Thomas S. Harkins, Esq., for the appellant<sup>1</sup>*

*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**ORDER REMANDING CASE**

Before:

ALEC J. KOROMILAS, Chief Judge

JANICE B. ASKIN, Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

On June 30, 2021 appellant, through counsel, filed a timely appeal from an April 2, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 21-1044.

On November 20, 2019 appellant, then a 41-year-old city carrier, filed a notice of recurrence (Form CA-2a) alleging that on October 25, 2019 he sustained a recurrence of disability and the need for medical treatment causally related to his accepted January 10, 2018 employment injury,<sup>2</sup> after his return to light-duty work. He related that his left hip degenerative joint disease was caused by work-related activities including, sitting on a folding chair, walking, and loading

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<sup>1</sup> In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

<sup>2</sup> The record reflects that appellant has an accepted traumatic injury claim (Form CA-1) for left hip tear sustained on January 10, 2018 following a slip and fall on ice. Appellant returned to work following this injury on October 1, 2019. OWCP assigned this claim File No. xxxxxx514.

parcels into a postal container, however, that he had not sustained any injury between January 10, 2018 and October 7, 2019. Appellant stopped work on October 25, 2019. OWCP assigned this claim No. xxxxxx572.

In an October 30, 2019 report, Dr. Donald Rose, a Board-certified orthopedic surgeon, noted that appellant was approximately one year and six months status postoperative left hip arthroscopy. He noted that appellant had returned to work and that he was working outside his recommended restrictions. Dr. Rose explained appellant's pain occurred when he increased activities, which was consistent with arthritic changes.

In a November 12, 2019 report, Dr. Craig Capeci, a Board-certified orthopedic surgeon, diagnosed left hip degenerative joint disease. He noted that appellant's left hip pain related back to a January 2018 work injury when he injured his left hip while slipping and falling on ice. Dr. Capeci reported that appellant returned to work in September 2019 following the January 2018 work injury. Appellant stopped work after three weeks as his pain progressively worsened. He explained that appellant had left hip arthritis in the setting of his 2018 left hip injury and labral tear.

In a letter dated February 19, 2020, the employing establishment requested OWCP adjudicate appellant's recurrence claim as a new occupational disease claim based on his identification of new work factors as the cause of his alleged condition. OWCP subsequently converted the claim from a recurrence to an occupational disease claim.

By decision dated May 5, 2020, OWCP denied appellant's occupational disease claim, finding that the medical evidence did not demonstrate that the claimed condition was causally related to the accepted employment factors.

On January 11, 2021 appellant, through counsel, requested reconsideration and submitted an August 19, 2020 report from Dr. Capeci.

Dr. Capeci, in his August 19, 2020 report, summarized appellant's treatment from June 4, 2018 through August 19, 2020. Diagnoses included status post left hip arthroscopy and left hip degenerative joint disease. Dr. Capeci opined that it was reasonable to attribute appellant's left hip degenerative joint disease to the accepted January 10, 2018 employment injury.

By decision dated April 2, 2021, OWCP denied modification. It found that Dr. Capeci's report did not discuss the claimed work factors, but rather explained that appellant's left hip condition was caused by the traumatic event of January 10, 2018, which was already accepted for left hip strain and was currently open for medical care.

The Board, having duly considered the matter, finds that the case is not in posture for decision.<sup>3</sup>

The Board finds that OWCP's procedures provide that cases should be administratively combined when correct adjudication of the issues depends on frequent cross-referencing between case files.<sup>4</sup> For example, if a new injury case is reported for an employee who previously filed an injury claim for a similar condition or the same part of the body, doubling is required.<sup>5</sup>

As OWCP File Nos. xxxxxx572 and xxxxxx514 both involve injuries to appellant's left hip, for a full and fair adjudication, the Board will remand the case to OWCP to administratively combine the present claim with OWCP File No xxxxxx514.<sup>6</sup> This will allow OWCP to consider all relevant claim files and accompanying evidence in developing his current compensation claim. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

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<sup>3</sup> The Board notes that appellant filed his claim as one for a recurrence of his accepted condition under OWCP File No. xxxxxx514. Dr. Capeci reported that appellant's current condition was causally related to appellant's accepted January 10, 2018 employment injury under OWCP File No. xxxxxx514. However, OWCP converted appellant's recurrence claim, which was filed within 90 days of the first return to work, to a claim for occupational disease and denied it as appellant had not established causal relationship. In cases where a recurrence is claimed within 90 days of the first return to duty, the focus is on disability rather than causal relationship of the accepted condition(s) to the work injury. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.5 (June 2013); *see also R.E.*, Docket No. 20-0421 (issued May 17, 2021); *R.W.*, Docket No. 17-0720 (issued May 21, 2018).

<sup>4</sup> *R.R.*, Docket No. 19-0368 (issued November 26, 2019); Federal (FECA) Procedure Manual, Part 2 -- Claims, *File Maintenance & Management*, Chapter 2.400.8c (February 2000).

<sup>5</sup> *L.B.*, Docket No. 21-0241 (issued October 28, 2021).

<sup>6</sup> *T.T.*, Docket No. 21-0049 (issued May 3, 2021); *S.D.*, Docket No. 19-0590 (issued August 28, 2020).

**IT IS HEREBY ORDERED THAT** the April 2, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: March 16, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board